

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INTERWORKS UNLIMITED, INC., )  
a California Corporation, )

Plaintiff, )

VS. )

DIGITAL GADGETS, LLC; )  
a New Jersey limited )  
liability company, )

Defendants. )

\_\_\_\_\_  
AND RELATED CROSS-ACTION. )  
\_\_\_\_\_ )

CASE NO.  
2:17-cv-4983 AB KSx

DEPOSITION OF  
ERIC LU

Thursday, September 13, 2018

9:58 A.M.

21650 Oxnard Street  
Suite 500  
Woodland Hills, California 91367



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| <p style="text-align: right;">Page 6</p> <p>1 A. Plaintiff.</p> <p>2 Q. Okay. I'm going to ask you questions during</p> <p>3 the course of the day. To the best of your ability,</p> <p>4 please answer my questions. To the best of your</p> <p>5 ability, when I'm asking a question, please wait for me</p> <p>6 to finish the question before you answer it, and I will</p> <p>7 do my best to not interrupt you when you're answering.</p> <p>8 A. Okay.</p> <p>9 Q. You have to answer verbally so that the court</p> <p>10 reporter can take it down. If, during the course of the</p> <p>11 examination, you wish to confer with counsel, that's</p> <p>12 fine, except I would ask you that you answer a pending</p> <p>13 question before you confer with counsel. So if we're in</p> <p>14 the middle of a question, before you speak to counsel,</p> <p>15 you should try your best to answer the question.</p> <p>16 Of course, if you don't understand the</p> <p>17 question, you can ask me to rephrase it. And, lastly,</p> <p>18 if during the course of the morning, you wish to take a</p> <p>19 break -- during the course of the day, I should say --</p> <p>20 just let me know, and we'll take a break.</p> <p>21 A. Okay.</p> <p>22 Q. By whom are you currently employed?</p> <p>23 A. Interworks Unlimited.</p> <p>24 Q. And what is your position?</p> <p>25 A. President.</p> | <p style="text-align: right;">Page 8</p> <p>1 years --</p> <p>2 A. Yes.</p> <p>3 Q. -- of its existence?</p> <p>4 And are your offices there?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know a company, Digital Gadgets, LLC?</p> <p>7 A. Yes.</p> <p>8 Q. And how do you know them?</p> <p>9 A. They were introduced to me by a sales -- a VP</p> <p>10 of sales at Chic.</p> <p>11 Q. And who is the VP of sales?</p> <p>12 A. Her name is Janet, last name is Lu, L-u. Not</p> <p>13 related.</p> <p>14 Q. And who is Chic?</p> <p>15 A. Chic is the manufacturer of the hoverboard.</p> <p>16 Q. When did this introduction take place?</p> <p>17 A. To my recollection, it's sometime in September</p> <p>18 or October of 2016.</p> <p>19 Q. And do you recall the reason for the</p> <p>20 introduction?</p> <p>21 A. Yes. Digital Gadgets -- Chris Mitchell, who</p> <p>22 was trying to solicit Chic for distribution in the</p> <p>23 U.S. -- we -- Interworks has the exclusive distribution.</p> <p>24 And an introduction was made between Janet and Chris, to</p> <p>25 me, for the reason that they want to sell Chic products</p>   |
| <p style="text-align: right;">Page 7</p> <p>1 Q. What is the business of Interworks?</p> <p>2 A. Distribution.</p> <p>3 Q. Distribution of what?</p> <p>4 A. Distribution of gaming, consumer electronics,</p> <p>5 and toys.</p> <p>6 Q. And are you the owner of Interworks?</p> <p>7 A. Yes.</p> <p>8 Q. Are there any other owners?</p> <p>9 A. No.</p> <p>10 Q. How many employees does Interworks have?</p> <p>11 A. Nine.</p> <p>12 Q. Is Tony Tu one of your employees?</p> <p>13 A. Yes.</p> <p>14 Q. What's his position?</p> <p>15 A. He's the accounts executive.</p> <p>16 Q. And what are his duties and responsibilities?</p> <p>17 A. His duties are to assist me to process -- to</p> <p>18 communicate with our clients, customers, and our</p> <p>19 vendors.</p> <p>20 Q. How long has Interworks been in business?</p> <p>21 A. Almost ten years.</p> <p>22 Q. Where is Interworks located?</p> <p>23 A. Interworks is located at 2418 Peck Road,</p> <p>24 City of Industry, California 90601.</p> <p>25 Q. Has it been at that location for the ten</p>   | <p style="text-align: right;">Page 9</p> <p>1 in the United States. And that's the reason for the</p> <p>2 introduction, is they can buy directly from us because</p> <p>3 we're the distributor -- the exclusive distributor.</p> <p>4 Q. So Mr. Mitchell had made inquiry of Chic to</p> <p>5 acquire product from them --</p> <p>6 A. Correct.</p> <p>7 Q. -- and Ms. Lu advised Mr. Mitchell that</p> <p>8 Interworks was the exclusive distributor, and therefore</p> <p>9 put the two of you together?</p> <p>10 A. Correct.</p> <p>11 Q. Now, at the time of this introduction, what was</p> <p>12 the business relationship between Chic and Interworks?</p> <p>13 What were you the exclusive distributors of?</p> <p>14 A. Exclusive distributors for their hoverboards.</p> <p>15 Q. Do they make a product besides hoverboards?</p> <p>16 A. Solely hoverboards.</p> <p>17 Q. And was the exclusivity that you had, was that</p> <p>18 in a writing?</p> <p>19 A. Yes.</p> <p>20 Q. Has that writing been produced in this lawsuit?</p> <p>21 A. I'm not sure.</p> <p>22 MR. LAZARUS: I'd call for the production of</p> <p>23 the exclusivity agreement.</p> <p>24 Q. When did Interworks and Chic enter into the</p> <p>25 exclusivity agreement?</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 A. Sometime in 2015.</p> <p>2 Q. Prior to the exclusivity arrangement, were you</p> <p>3 doing business with Chic?</p> <p>4 A. Yes, we were.</p> <p>5 Q. And the prior business consisted of purchasing</p> <p>6 hoverboards?</p> <p>7 A. Correct.</p> <p>8 Q. And how long had that prior business gone on?</p> <p>9 A. Probably for about a year.</p> <p>10 Q. Tell me, please, how it came to pass that the</p> <p>11 arrangement became an exclusive.</p> <p>12 A. Well, for a business relationship, you know, we</p> <p>13 sold their product. They needed a distributor for the</p> <p>14 U.S. channel. And we had the retail channels; so, you</p> <p>15 know, that's kind of how it came about.</p> <p>16 Q. They had no other distributor in the U.S.?</p> <p>17 A. At that time, no.</p> <p>18 Q. Did they propose the exclusive arrangement, or</p> <p>19 did you?</p> <p>20 A. I think it was mutual.</p> <p>21 Q. In your earlier answer, you used the</p> <p>22 expression, "we had the retail channels."</p> <p>23 What does that mean?</p> <p>24 A. Retail channels is your retail stores in the</p> <p>25 United States. You know, big-bucks stores. Your -- you</p> | <p style="text-align: right;">Page 12</p> <p>1 (Whereupon, the record was read back</p> <p>2 by the Court Reporter as follows:</p> <p>3 "Q. Prior to the exclusivity</p> <p>4 arrangement, had you made sales of</p> <p>5 hoverboards to QVC?")</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. LAZARUS:</p> <p>8 Q. To whom had you made sales?</p> <p>9 A. Again, that's a trade secret. I --</p> <p>10 Q. What's secret about it?</p> <p>11 A. Because Digital Gadgets is a competitor, and</p> <p>12 they have all rights to get the information from who I'm</p> <p>13 selling to so they can attempt to solicit my accounts.</p> <p>14 So for that reason, I don't think that I should disclose</p> <p>15 any of the retail accounts. I mean, if you can figure</p> <p>16 what the retail accounts are, you know, it's what is out</p> <p>17 there. It's retailers.</p> <p>18 Q. Okay. So exactly why it's not confidential or</p> <p>19 secret.</p> <p>20 So which retailers was it?</p> <p>21 A. It's secret in who is selling hoverboards. I</p> <p>22 don't want to disclose that.</p> <p>23 Q. Okay. So on your counsel's instruction, you're</p> <p>24 refusing to disclose your customer base for hoverboards;</p> <p>25 is that correct?</p> |
| <p style="text-align: right;">Page 11</p> <p>1 know, your Wal-Mart, Target, your Best Buy, Toys "R" Us.</p> <p>2 You know, big-bucks retailers.</p> <p>3 Q. When you say "We had the retail channels," what</p> <p>4 do you mean?</p> <p>5 A. That means we sell to the retail channels.</p> <p>6 Q. Okay. Did you have any exclusivity arrangement</p> <p>7 with any retailer?</p> <p>8 A. No.</p> <p>9 Q. Prior to the exclusivity arrangement, had you</p> <p>10 sold hoverboards to the retail channel?</p> <p>11 A. Yes.</p> <p>12 Q. To whom did you make those sales?</p> <p>13 MR. HSU: Hold on.</p> <p>14 Objection. Trade secrets. Not reasonably</p> <p>15 calculated to lead to any admissible evidence.</p> <p>16 Where are we going?</p> <p>17 BY MR. LAZARUS:</p> <p>18 Q. Okay. Just answer the question.</p> <p>19 MR. HSU: I instruct the witness not to answer.</p> <p>20 MR. LAZARUS: Okay. Mark that, and I will seek</p> <p>21 sanctions.</p> <p>22 Q. Prior to the exclusivity arrangement, had you</p> <p>23 made sales of hoverboards to QVC?</p> <p>24 A. Can you repeat that question?</p> <p>25 MR. LAZARUS: Could you read the question back.</p>  | <p style="text-align: right;">Page 13</p> <p>1 A. That's correct.</p> <p>2 MR. HSU: I reiterate my objection and</p> <p>3 instruction. Thank you.</p> <p>4 MR. LAZARUS: And your objection is it's a</p> <p>5 secret?</p> <p>6 MR. HSU: Trade secret. Without a protective</p> <p>7 order, you're not going to get it. And I offered you.</p> <p>8 THE REPORTER: I'm sorry?</p> <p>9 MR. HSU: "And I offered you."</p> <p>10 MR. LAZARUS: Don't try to justify your</p> <p>11 misconduct.</p> <p>12 MR. HSU: You can say whatever you want.</p> <p>13 MR. LAZARUS: I will say whatever I want.</p> <p>14 Thank you.</p> <p>15 MR. HSU: It's your deposition.</p> <p>16 MR. LAZARUS: It is my deposition.</p> <p>17 Q. For what period of time prior to the</p> <p>18 exclusivity arrangement had you sold hoverboards to QVC?</p> <p>19 A. Did you say "prior to the exclusivity"?</p> <p>20 Q. Yes, sir, that's what I said.</p> <p>21 A. I did not sell hoverboards to QVC.</p> <p>22 Q. Okay. So after -- the first sales by</p> <p>23 Interworks, to QVC, of hoverboards came after you</p> <p>24 entered into the exclusivity arrangement?</p> <p>25 A. Correct.</p>  |

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| <p style="text-align: right;">Page 14</p> <p>1 Q. Okay. And how many units did you sell?</p> <p>2 A. Roughly, off my head (verbatim), about 10,000.</p> <p>3 Q. Over what period of time?</p> <p>4 A. Of a one-month period.</p> <p>5 Q. What month?</p> <p>6 A. The month of November.</p> <p>7 Q. What year?</p> <p>8 A. 2016.</p> <p>9 Q. And what model hoverboard did you sell?</p> <p>10 A. It's the High Roller Model C.</p> <p>11 Q. Prior to selling hoverboards to QVC, had you --</p> <p>12 Interworks made sales of products to QVC?</p> <p>13 A. No.</p> <p>14 Q. Who introduced you to QVC?</p> <p>15 A. I contacted QVC.</p> <p>16 Q. And when did you do that?</p> <p>17 A. Around April of 2016.</p> <p>18 Q. And who did you contact?</p> <p>19 A. The buyer, Meghan Kane.</p> <p>20 Q. And between April of 2016 and November of 2016,</p> <p>21 how did it develop that you were able to sell</p> <p>22 10,000 units to QVC?</p> <p>23 A. Well, we made our sales pitch. We presented</p> <p>24 our product. And Chic has the patent for the</p> <p>25 hoverboard; so at that point, QVC decided to bring it on</p>  | <p style="text-align: right;">Page 16</p> <p>1 Q. And they told you that the airing would be</p> <p>2 approximately November of 2016?</p> <p>3 A. Right.</p> <p>4 Q. Okay. When did you take in the -- withdrawn.</p> <p>5 Did you physically receive the hoverboards from</p> <p>6 Chic?</p> <p>7 A. Well, the goods came in late October, beginning</p> <p>8 of November. And products came in in sequence. It's</p> <p>9 coming in containers. It's a large volume; so it's many</p> <p>10 containers that come in. So around that period of time,</p> <p>11 products are flowing in.</p> <p>12 Q. In the fall of 2016, sometime in October?</p> <p>13 A. Right.</p> <p>14 Q. And where did they come into?</p> <p>15 A. The Long Beach port and then to my warehouse.</p> <p>16 Q. Okay. Where is your warehouse?</p> <p>17 A. 2418 Peck Road.</p> <p>18 Q. And did you take in 10,000 pieces from Chic,</p> <p>19 approximately?</p> <p>20 A. Yes.</p> <p>21 Q. And were all 10,000 of those sold to QVC?</p> <p>22 A. Yes.</p> <p>23 Q. Other than -- other than those 10,000 pieces,</p> <p>24 and in the period of calendar year 2016, had you taken</p> <p>25 in any other hoverboards for any other customer?</p> |
| <p style="text-align: right;">Page 15</p> <p>1 board.</p> <p>2 Q. At what point?</p> <p>3 A. What's that?</p> <p>4 Q. At what point did they decide to bring in your</p> <p>5 board?</p> <p>6 A. I would say somewhere around June -- June, July</p> <p>7 time frame.</p> <p>8 Q. And from June to November, what happened?</p> <p>9 A. Can you rephrase that?</p> <p>10 "What happened"? What do you mean, "what</p> <p>11 happened"? I'm not understanding the question.</p> <p>12 Q. Well, if they decided to bring them in in June,</p> <p>13 and the first sales were in November, what happened in</p> <p>14 the period between June and November relative to those</p> <p>15 sales?</p> <p>16 A. Well, between the time between June and</p> <p>17 November, when they needed the goods, they -- as a</p> <p>18 buyer, they have to plan when they're going to air it</p> <p>19 because, as you know, QVC is not a -- QVC is not a</p> <p>20 retail store. So they have to book an airing time. And</p> <p>21 during that process, they're setting up for the</p> <p>22 holidays. So they're going to -- you know, we discuss</p> <p>23 the product, then they gave us airing time when they</p> <p>24 needed to deliver the goods and when they're going to do</p> <p>25 the airing. So...</p> | <p style="text-align: right;">Page 17</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And how many pieces did you sell?</p> <p>3 A. Probably in the range of another, give or take,</p> <p>4 10,000.</p> <p>5 Q. And was that before or after you took in the</p> <p>6 pieces for QVC?</p> <p>7 A. Before.</p> <p>8 Q. And after you took in the 10,000 pieces to --</p> <p>9 for QVC, did you ever again take in hoverboards for sale</p> <p>10 to QVC -- for Interworks sale to QVC?</p> <p>11 A. Yes.</p> <p>12 Q. When?</p> <p>13 A. Like I said, products were coming in from --</p> <p>14 you know, coming in for the holidays. So there needs to</p> <p>15 be replenishment. So there were goods coming in</p> <p>16 through -- every month, there's goods coming in.</p> <p>17 (Interruption in proceedings due to cell</p> <p>18 phone.)</p> <p>19 MR. LAZARUS: Excuse me.</p> <p>20 Yeah? I am. You're --</p> <p>21 THE WITNESS: You have to type that. He didn't</p> <p>22 say "Off the record."</p> <p>23 THE REPORTER: I can do my job, thank you.</p> <p>24 BY MR. LAZARUS:</p> <p>25 Q. I'm sorry.</p>  |

| Page 18   | Page 20   |
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| <p>1 After the 10,000 pieces were taken in, were</p> <p>2 they delivered to QVC?</p> <p>3 <b>A.</b> Which 10,000? Before or the after?</p> <p>4 I told you, there's before QVC and after --</p> <p>5 after I shipped 10,000 QVC items. So -- so before or</p> <p>6 after?</p> <p>7 <b>Q.</b> Okay. You said you took in 10,000 pieces for</p> <p>8 QVC in October.</p> <p>9 <b>A.</b> Right. Right.</p> <p>10 Then, after, there's a continuation of products</p> <p>11 coming in.</p> <p>12 <b>Q.</b> Okay. Were all 10,000 pieces shipped to QVC?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> Were they shipped, or were they called out by</p> <p>15 QVC customers --</p> <p>16 <b>A.</b> They were shipped to QVC.</p> <p>17 <b>Q.</b> Okay. The subsequent pieces, over what period</p> <p>18 of time would you make those shipments?</p> <p>19 <b>A.</b> Well, the remaining -- the flow of products</p> <p>20 that's coming in, those are for our other customers, for</p> <p>21 reorders and for the holidays. So, you know, there's</p> <p>22 always a flow of products coming in. It's not 10,000</p> <p>23 for QVC and you stop. There's a flow of products.</p> <p>24 <b>Q.</b> Okay. But I asked you about QVC.</p> <p>25 When did you next ship goods to QVC after the</p>   | <p>1 <b>Q.</b> Where were they delivered?</p> <p>2 <b>A.</b> They were delivered to the Phoenix distribution</p> <p>3 in Santa Fe, which is Digital Gadgets's third-party</p> <p>4 warehouse logistics company.</p> <p>5 <b>Q.</b> And if you know, after delivery to Phoenix,</p> <p>6 where did those goods next go?</p> <p>7 <b>A.</b> Those goods, to my understanding, should be for</p> <p>8 QVC's customers.</p> <p>9 <b>Q.</b> Do you mean to say that they were shipped out</p> <p>10 of the Phoenix warehouse, to your understanding, direct</p> <p>11 to the QVC customer?</p> <p>12 <b>A.</b> Correct.</p> <p>13 <b>Q.</b> Now, in what manner -- withdrawn.</p> <p>14 What is the reason that that was an expedited</p> <p>15 manner of doing business?</p> <p>16 How did you save time?</p> <p>17 <b>A.</b> Well, saving time is -- the transit time from</p> <p>18 our warehouse to -- to QVC's DC takes about seven days.</p> <p>19 Okay? And for QVC to receive the goods and prepare the</p> <p>20 goods to ship, I don't know how long that's going to</p> <p>21 take. Okay? So with the drop-ship, they can</p> <p>22 immediately ship directly to the consumer versus going</p> <p>23 to the DC -- to the distribution center and the</p> <p>24 distribution center out to that consumer.</p> <p>25 And, again, the reason that we did the</p>                   |
| Page 19   | Page 21   |
| <p>1 10,000 pieces?</p> <p>2 <b>A.</b> After we shipped the 10,000 pieces to QVC, the</p> <p>3 next shipment, we actually went through Digital Gadgets.</p> <p>4 <b>Q.</b> What does that mean, "we went through</p> <p>5 Digital Gadgets"?</p> <p>6 <b>A.</b> So Interworks sells directly to QVC, to their</p> <p>7 direct DC vendor. Digital Gadgets is a drop-ship</p> <p>8 vendor. And due to the timing and the holidays, QVC</p> <p>9 needed more products and the timing for us to ship to</p> <p>10 the DC for the airing out to the customers, and the</p> <p>11 timing didn't work out. So that's where Digital Gadgets</p> <p>12 came in and asked to work together to do the online side</p> <p>13 or the drop-ship side. So we sold Digital Gadgets goods</p> <p>14 so that they can be the drop-ship vendor for QVC.</p> <p>15 <b>Q.</b> The goods -- the 10,000 pieces that Interworks</p> <p>16 sold to QVC were delivered to the QVC distribution</p> <p>17 center?</p> <p>18 <b>A.</b> Correct.</p> <p>19 <b>Q.</b> And they were billed to QVC by Interworks?</p> <p>20 <b>A.</b> Correct.</p> <p>21 <b>Q.</b> The drop-ship goods that you're referring to</p> <p>22 were delivered -- withdrawn.</p> <p>23 Were the drop-ship goods that you referred to</p> <p>24 delivered to the DC?</p> <p>25 <b>A.</b> No.</p> | <p>1 drop-ship is because it's a timing and it's</p> <p>2 Christmastime, and so people want their gifts before</p> <p>3 Christmas.</p> <p>4 <b>Q.</b> You will recall that you answered, a minute or</p> <p>5 two ago, when I was asking you about the shipments --</p> <p>6 after the 10,000 units, when your next shipments were to</p> <p>7 QVC, and your answer was that the next shipment was</p> <p>8 actually through Digital Gadgets.</p> <p>9 Do you recall that?</p> <p>10 <b>A.</b> Mm-hmm.</p> <p>11 <b>Q.</b> Okay. So was there an agreement, between you</p> <p>12 and Digital Gadgets, pertaining to the sale and delivery</p> <p>13 of hoverboard units, by Digital, to QVC, at the time</p> <p>14 that you made the sale to Digital Gadgets?</p> <p>15 <b>A.</b> When you refer to "agreement," do you -- are</p> <p>16 you referring to a contract, or are you referring to a</p> <p>17 PO? What are you referring to, "agreement"?</p> <p>18 <b>Q.</b> Do you know what an agreement is?</p> <p>19 <b>A.</b> I do know what an agreement is, but there's</p> <p>20 many forms of "agreement."</p> <p>21 <b>Q.</b> Thank you.</p> <p>22 Was there an agreement between you and</p> <p>23 Digital Gadgets whereby you and Digital Gadgets</p> <p>24 understood that these hoverboards would go to QVC?</p> <p>25 <b>A.</b> The agreement is they're PO'd to us.</p> |



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| <p style="text-align: right;">Page 22</p> <p>1 <b>Q.</b> The Digital Gadgets PO?</p> <p>2 <b>A.</b> Correct. Digital Gadgets's PO.</p> <p>3 <b>Q.</b> Okay. However, again, referring to your</p> <p>4 earlier answer, you stated that your next shipment to</p> <p>5 QVC went through Digital Gadgets --</p> <p>6 <b>A.</b> Correct.</p> <p>7 <b>Q.</b> Do you recall that?</p> <p>8 -- so when Digital Gadgets purchased those</p> <p>9 goods from Interworks, was it your understanding that</p> <p>10 Digital Gadgets would deliver those units to QVC?</p> <p>11 <b>A.</b> That's correct.</p> <p>12 <b>Q.</b> And how many units were -- were subject of this</p> <p>13 agreement?</p> <p>14 <b>A.</b> 4,800 pieces for the first order.</p> <p>15 <b>Q.</b> First quarter of what year?</p> <p>16 <b>A.</b> No. First order.</p> <p>17 <b>Q.</b> I'm sorry. First order. Okay.</p> <p>18 And what model was that?</p> <p>19 <b>A.</b> Model C.</p> <p>20 <b>Q.</b> Now --</p> <p>21 <b>A.</b> And a second order of 5,800 pieces.</p> <p>22 <b>Q.</b> And timing-wise, when was the 4,800-piece order</p> <p>23 placed?</p> <p>24 <b>A.</b> 4,800-piece order was placed roughly around</p> <p>25 beginning of December.</p>   | <p style="text-align: right;">Page 24</p> <p>1 <b>Q.</b> Now, the units for the first order, when --</p> <p>2 when that order was placed by Digital Gadgets, did</p> <p>3 Interworks have those units in inventory?</p> <p>4 <b>A.</b> Yes.</p> <p>5 <b>Q.</b> How about when the second order came?</p> <p>6 <b>A.</b> Yes.</p> <p>7 <b>Q.</b> And when -- when did you acquire those units?</p> <p>8 <b>A.</b> Again, it's between November through December.</p> <p>9 The whole -- products come on a container load. And</p> <p>10 there's 2,400 per container; so they come on a weekly</p> <p>11 basis.</p> <p>12 <b>Q.</b> Were they -- did they arrive at the same time</p> <p>13 as the 10,000 pieces that you shipped to the QVC drop</p> <p>14 center?</p> <p>15 <b>A.</b> No. They come two or three containers per</p> <p>16 week. So in sequence, they come, you know, on the -- on</p> <p>17 a week-to-week basis. Not in one shot, the 10,000, but,</p> <p>18 you know, little by little they trickle in.</p> <p>19 <b>Q.</b> Am I correct that the 10,000 pieces that you</p> <p>20 sold to QVC arrived contemporaneous with the</p> <p>21 4,800 pieces that ultimately went through</p> <p>22 Digital Gadgets?</p> <p>23 <b>A.</b> Can you repeat that question?</p> <p>24 <b>Q.</b> Let me try again. Did you --</p> <p>25 <b>A.</b> Yeah.</p>                      |
| <p style="text-align: right;">Page 23</p> <p>1 <b>Q.</b> And the 5,800-piece order?</p> <p>2 <b>A.</b> 5,800 pieces was around early January.</p> <p>3 <b>Q.</b> Now, prior to the placement of those orders --</p> <p>4 and, by the way, I want to be clear.</p> <p>5 Those were Digital Gadgets orders to</p> <p>6 Interworks; correct?</p> <p>7 <b>A.</b> Correct.</p> <p>8 <b>Q.</b> Okay. Prior to the placement of those orders,</p> <p>9 by Digital Gadgets, with Interworks, had you spoken to</p> <p>10 QVC concerning the routing of these goods through</p> <p>11 Digital Gadgets?</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> With whom did you speak?</p> <p>14 <b>A.</b> Again with Meghan Kane.</p> <p>15 <b>Q.</b> Tell me what those conversations were.</p> <p>16 <b>A.</b> The conversations were, "How can we expedite</p> <p>17 more products?" "How can we sell and push more units</p> <p>18 for the holidays?"</p> <p>19 And the solution was to use a drop-ship vendor.</p> <p>20 <b>Q.</b> And that was Digital Gadgets?</p> <p>21 <b>A.</b> So -- Digital Gadgets. Correct.</p> <p>22 <b>Q.</b> And that's the earlier story you told me about</p> <p>23 the introduction? That's the reason for the</p> <p>24 introduction?</p> <p>25 <b>A.</b> Correct.</p> | <p style="text-align: right;">Page 25</p> <p>1 <b>Q.</b> Did these -- did you buy 10,000 pieces for drop</p> <p>2 for your shipment to the QVC DC, and then buy</p> <p>3 4,800 pieces for Digital Gadgets to drop-ship?</p> <p>4 (Verbatim.)</p> <p>5 <b>A.</b> No. We bought -- we bought 20,000 units --</p> <p>6 <b>Q.</b> Okay.</p> <p>7 <b>A.</b> -- from the factory. And the units that come</p> <p>8 in, we allocate 10,000 to QVC, which they committed to;</p> <p>9 and then whatever that QVC wanted additionally for the</p> <p>10 drop-ship, that's what Digital Gadgets ordered.</p> <p>11 <b>Q.</b> Okay. And is there a piece of paper from</p> <p>12 Interworks, to Chic, that is an order for 20,000 units</p> <p>13 of hoverboards -- these 20,000?</p> <p>14 <b>A.</b> You mean like a PO?</p> <p>15 <b>Q.</b> Yes, sir.</p> <p>16 <b>A.</b> Of course.</p> <p>17 <b>Q.</b> Okay. And do you, Interworks, maintain a copy</p> <p>18 of that PO?</p> <p>19 <b>A.</b> Of course.</p> <p>20 MR. LAZARUS: I call for the production of that</p> <p>21 purchase order, which I don't think has been produced.</p> <p>22 THE WITNESS: But again, Roger, with this is</p> <p>23 this is a trade secret, also, because that's my factory.</p> <p>24 And this document -- I mean, this document has all the</p> <p>25 information -- costs and -- you know, the factory</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 information. And I don't want this disclosed because --</p> <p>2 BY MR. LAZARUS:</p> <p>3 Q. I'm not interested in -- I understand what</p> <p>4 you're saying. I don't need the explanation. You don't</p> <p>5 want to produce it. I will take it up with the court</p> <p>6 down the road. I don't need the explanation.</p> <p>7 MR. HSU: Yeah. When the request is being</p> <p>8 made, we can respond to it.</p> <p>9 MR. LAZARUS: The request is being made now,</p> <p>10 and I will put it in writing when I get the transcript.</p> <p>11 But I do want to go on record. I want the PO -- or POs</p> <p>12 from Interworks, to Chic, for these -- for these</p> <p>13 hoverboards.</p> <p>14 Q. Now, when the hoverboards -- these</p> <p>15 20,000 pieces arrived, were they all received at the</p> <p>16 Interworks warehouse?</p> <p>17 A. Yes.</p> <p>18 Q. And the approximately 10,000 pieces were</p> <p>19 drop-shipped to -- pardon me -- were -- withdrawn.</p> <p>20 10,000 pieces, approximately, were shipped to</p> <p>21 the QVC distribution center, and another 10,000 over</p> <p>22 time, approximately, went to the Phoenix warehouse for</p> <p>23 Digital Gadgets?</p> <p>24 A. Correct.</p> <p>25 Q. Was there one PO to Chic, from Interworks, for</p> | <p style="text-align: right;">Page 28</p> <p>1 you referring to working in the pick-and-pack, or are</p> <p>2 you talking about working in the office?</p> <p>3 I mean -- you know, the question is kind of</p> <p>4 vague. Like, you know, working in the warehouse -- my</p> <p>5 employees who do processing don't really work in the</p> <p>6 warehouse.</p> <p>7 Q. Then you answered the question.</p> <p>8 A. Yeah.</p> <p>9 Q. How many work in the warehouse?</p> <p>10 A. About three, four.</p> <p>11 Q. Okay. And how many work in the office</p> <p>12 associated with the warehouse?</p> <p>13 A. About five.</p> <p>14 Q. Is Mr. Tu one of those?</p> <p>15 A. He's one of the five.</p> <p>16 Q. Do the four warehouse workers have different</p> <p>17 duties from one another?</p> <p>18 A. No.</p> <p>19 Q. Okay. What do they do? What do they do when</p> <p>20 goods are received?</p> <p>21 A. They unload containers, pick-and-pack.</p> <p>22 Q. So our record is clear, when you say</p> <p>23 "pick-and-pack," what does that mean?</p> <p>24 A. That means they take the product, label the</p> <p>25 product with the shipping information, and get it ready</p>  |
| <p style="text-align: right;">Page 27</p> <p>1 these 20,000 pieces, or more than one?</p> <p>2 A. Through the year or...? I mean --</p> <p>3 Q. These 20,000 pieces that we've been talking</p> <p>4 about.</p> <p>5 A. I don't remember how many POs. But it could be</p> <p>6 one; it could be two.</p> <p>7 Q. Okay. And what was ordered on the POs?</p> <p>8 A. The Model C hoverboards.</p> <p>9 Q. And the Model C hoverboards that were shipped</p> <p>10 to the QVC distribution center, were they from the same</p> <p>11 POs that were shipped by Interworks to -- to Phoenix,</p> <p>12 the warehouse for Digital Gadgets?</p> <p>13 A. Yes.</p> <p>14 Q. So that the hoverboards that went from</p> <p>15 Interworks to QVC should have been identical to the</p> <p>16 hoverboards that went from Digital to -- drop-shipped to</p> <p>17 QVC's customers?</p> <p>18 A. Yes.</p> <p>19 Q. And when -- withdrawn.</p> <p>20 Of the nine employees that Interworks has, were</p> <p>21 they all there in calendar year 2016 and '17?</p> <p>22 A. I believe so.</p> <p>23 Q. And how many of those employees were at the</p> <p>24 warehouse or worked at the warehouse?</p> <p>25 A. So when you say "worked at the warehouse," are</p>   | <p style="text-align: right;">Page 29</p> <p>1 and prepare to ship.</p> <p>2 Q. And in the ordinary course, do they inspect the</p> <p>3 received units?</p> <p>4 A. They do not inspect goods.</p> <p>5 Q. Why not?</p> <p>6 A. Well, let me rephrase that.</p> <p>7 When you talk about "inspect the goods" -- so</p> <p>8 are you talking about opening the boxes and looking into</p> <p>9 the products and inspecting the products, or are you</p> <p>10 talking about making sure that the boxes are not damaged</p> <p>11 from the outside?</p> <p>12 Q. Okay. Whichever one you want.</p> <p>13 Do they inspect the goods or not?</p> <p>14 A. Well, they do inspect the goods, looking --</p> <p>15 making sure that the product is not damaged from the</p> <p>16 outside.</p> <p>17 Q. So they don't open the box?</p> <p>18 A. They do not open the box. However, we do do</p> <p>19 spot checks. So what we do is Tony -- he goes out there</p> <p>20 and opens certain boxes, turn it on, turn it off to test</p> <p>21 the products. (Verbatim.) And after that is done, then</p> <p>22 everything goes out.</p> <p>23 Q. Do you know that Mr. Tony Tu did that with</p> <p>24 respect to the hoverboards that were delivered, by</p> <p>25 Interworks, to Digital Gadgets?</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 A. Yeah, he did do the inspection.</p> <p>2 Q. How do you know?</p> <p>3 A. Because he inspects the product. That's part</p> <p>4 of his job.</p> <p>5 Q. Okay. But do you know that he inspected these</p> <p>6 goods?</p> <p>7 A. Yes.</p> <p>8 Q. How do you know that?</p> <p>9 A. Because he -- he communicated with</p> <p>10 Digital Gadgets that, you know, the products that went</p> <p>11 out -- (inaudible) his inspections.</p> <p>12 MR. LAZARUS: Could you repeat the --</p> <p>13 THE REPORTER: Did you say "passed his</p> <p>14 inspections"?</p> <p>15 THE WITNESS: Huh?</p> <p>16 THE REPORTER: "Because he -- he communicated</p> <p>17 with Digital Gadgets that, you know, the products that</p> <p>18 went out" --</p> <p>19 Did you say "passed his inspection"? Is that</p> <p>20 what you said?</p> <p>21 THE WITNESS: "Passed inspection"?</p> <p>22 THE REPORTER: I'm asking you.</p> <p>23 THE WITNESS: Oh, okay.</p> <p>24 Yeah, make sure that the products are spot</p> <p>25 checked and tested, and make sure they're good.</p>  | <p style="text-align: right;">Page 32</p> <p>1 products arrived at your warehouse, what paperwork came</p> <p>2 with the hoverboards?</p> <p>3 A. That would be standard bill of lading. And I</p> <p>4 believe the -- the performer invoices from -- from</p> <p>5 the -- from the factory that comes along with the bill</p> <p>6 of lading.</p> <p>7 Q. Now, prior to the 20,000 pieces that we're</p> <p>8 talking about arriving at the Interworks warehouse, and</p> <p>9 in the process of Interworks making sales to QVC, did</p> <p>10 Interworks supply product specifications to QVC for</p> <p>11 these hoverboards?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And how do you know that that happened?</p> <p>14 A. Well, that's -- that's a requirement for</p> <p>15 documentations that they request and that we submitted</p> <p>16 to them.</p> <p>17 Q. What are those documentations?</p> <p>18 A. The UL certifications and patent. And I</p> <p>19 think -- I think those are the two major ones that we</p> <p>20 have submitted to them.</p> <p>21 Q. Do you know if third-party test reports were</p> <p>22 submitted?</p> <p>23 A. I believe so.</p> <p>24 Q. And who at Interworks was tasked with sending</p> <p>25 those documents for the --</p> |
| <p style="text-align: right;">Page 31</p> <p>1 BY MR. LAZARUS:</p> <p>2 Q. So how do you know he did this?</p> <p>3 A. How do I know he did that?</p> <p>4 Well, that's part of his job. I mean, I don't</p> <p>5 know if did he it or not, but he -- that's -- he claimed</p> <p>6 that he did. He said that he did. And that's part of</p> <p>7 his job. And that's not only for QVC. That's for every</p> <p>8 customer that we ship the products to.</p> <p>9 One thing is -- that we do clearly is, when the</p> <p>10 goods come in, instead of having the guys that did the</p> <p>11 pick-and-pack, I have Tony, which is a more knowledge</p> <p>12 and detailed person, inspect the product.</p> <p>13 Q. And the inspection that you referred to was he</p> <p>14 opened boxes and turned the product on and off?</p> <p>15 A. Right. Testing the product if everything is</p> <p>16 functioning correctly.</p> <p>17 Q. Which means turning it on and turning it off?</p> <p>18 A. Turning it on, making sure the wheels spin</p> <p>19 and -- you know, that's a typical test that we do.</p> <p>20 Q. Do you keep records of those tests?</p> <p>21 A. We don't have records of those tests.</p> <p>22 Q. Do you know if Mr. Tony Tu kept records of his</p> <p>23 testing?</p> <p>24 A. I don't think he -- we keep testing records.</p> <p>25 Q. Now, when the products arrive -- the hoverboard</p> | <p style="text-align: right;">Page 33</p> <p>1 A. Tony sent those documents.</p> <p>2 Q. Did Tony set up the hoverboard product on the</p> <p>3 QVC vendor portal?</p> <p>4 A. Yes.</p> <p>5 Q. What does that mean? What did he do?</p> <p>6 A. So I don't handle that aspect. Okay? So what</p> <p>7 that means is -- to my knowledge, is putting up the</p> <p>8 vendor number, the UPC number, you know, the cost.</p> <p>9 Basic setup information.</p> <p>10 Q. Okay. And do you know if QVC has a process</p> <p>11 whereby they pass or fail proposed products?</p> <p>12 A. I think so.</p> <p>13 Q. Are you a participant, you personally, in that</p> <p>14 process?</p> <p>15 A. No, I'm not.</p> <p>16 Q. Who is?</p> <p>17 A. Tony was the one who did the processing.</p> <p>18 Q. Okay. Does Tony -- was it Tony's job to</p> <p>19 physically send a hoverboard to QVC for their</p> <p>20 inspection?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know how many hoverboards were sent</p> <p>23 to QVC for QVC's approval before delivery of the</p> <p>24 10,000 pieces by Interworks?</p> <p>25 A. I'm not -- I'm not sure how many pieces they</p>  |



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| <p style="text-align: right;">Page 38</p> <p>1 that correct?</p> <p>2 <b>A.</b> That's correct.</p> <p>3 <b>MR. LAZARUS:</b> Did you keep your exhibits? You</p> <p>4 don't have to --</p> <p>5 <b>THE REPORTER:</b> There are a lot of papers; so</p> <p>6 let's not get them mixed up.</p> <p>7 <b>MR. LAZARUS:</b> Okay. With that in mind, if</p> <p>8 you'll just take out Tu 10.</p> <p>9 <b>Q.</b> Have you ever seen Tu 10 before?</p> <p>10 <b>A.</b> I don't remember seeing this.</p> <p>11 <b>Q.</b> You do know that Interworks has commenced an</p> <p>12 action against Digital Gadgets; correct?</p> <p>13 <b>A.</b> Correct.</p> <p>14 <b>Q.</b> And do you see that this document, Tu 10, is</p> <p>15 titled, on the first page, the right side, "Complaint</p> <p>16 for Breach of Contract," and it continues?</p> <p>17 <b>A.</b> What page?</p> <p>18 <b>MR. HSU:</b> The first page.</p> <p>19 <b>THE WITNESS:</b> Okay.</p> <p>20 <b>BY MR. LAZARUS:</b></p> <p>21 <b>Q.</b> Okay. Have you ever seen this document before?</p> <p>22 And feel free to look through it.</p> <p>23 <b>A.</b> Yes. This one -- this one, yes. I thought</p> <p>24 this was a Tony file. So -- okay. Yes.</p> <p>25 <b>Q.</b> Okay. So you have seen this before?</p>  | <p style="text-align: right;">Page 40</p> <p>1 <b>A.</b> Conforming, meaning that the specs that they</p> <p>2 have in the patent and how they made this product, all</p> <p>3 the components, all the ICs, are per the specs of the</p> <p>4 creator of the product.</p> <p>5 <b>Q.</b> Okay. And the specs that you are referring to</p> <p>6 were specs that were approved by QVC?</p> <p>7 <b>A.</b> Well, yes.</p> <p>8 <b>Q.</b> Okay. And so the products that were delivered</p> <p>9 by Interworks, to Digital Gadgets, were conforming to</p> <p>10 the QVC specs?</p> <p>11 <b>A.</b> Yes.</p> <p>12 <b>Q.</b> Do you know that?</p> <p>13 <b>A.</b> I know that.</p> <p>14 <b>Q.</b> How do you know that?</p> <p>15 <b>A.</b> I know that because the shipments that came in</p> <p>16 from Chic -- I know that the qualities -- are a good</p> <p>17 quality product, and the fact that we did do our due</p> <p>18 diligence of spot checking the products. And products</p> <p>19 that went out to Digital Gadgets had no issues.</p> <p>20 <b>Q.</b> Okay. So you're assuming that they were the</p> <p>21 same because you followed a course of conduct that you</p> <p>22 typically follow with respect to the receipt and</p> <p>23 delivery of goods?</p> <p>24 <b>A.</b> Correct.</p> <p>25 <b>Q.</b> Now, when -- withdrawn.</p> |
| <p style="text-align: right;">Page 39</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> Okay. I want you to look at Paragraph 9 of the</p> <p>3 complaint, at Page 4, which says that -- "Even though</p> <p>4 the hoverboards were conforming and accepted, defendant</p> <p>5 has failed to fully pay for these orders."</p> <p>6 Do you see that?</p> <p>7 <b>A.</b> Mm-hmm.</p> <p>8 <b>Q.</b> How do you know the hoverboards were</p> <p>9 conforming?</p> <p>10 <b>A.</b> Again, the hoverboards were made by the</p> <p>11 original creator of this product. Okay? The specs, the</p> <p>12 quality control -- it is the best quality hoverboard in</p> <p>13 the market. Okay?</p> <p>14 In China, the factories -- I've inspected the</p> <p>15 factory, seen the quality of the product. So when the</p> <p>16 products come in, when we do our spot check, it</p> <p>17 determines how many units turn on or don't turn on.</p> <p>18 That's what we're trying to determine. That's the only</p> <p>19 way that we can determine that these goods are good or</p> <p>20 bad. Okay? There's no other way. If we open the</p> <p>21 product, that voids the contract -- or voids the</p> <p>22 warranty.</p> <p>23 <b>Q.</b> Now, when it says here at Paragraph 9, "Even</p> <p>24 though the hoverboards were conforming," what do you</p> <p>25 understand the reference to -- "conforming" to mean?</p> | <p style="text-align: right;">Page 41</p> <p>1 Do you know how big a factory Chic is?</p> <p>2 <b>A.</b> They're -- they're a big factory.</p> <p>3 <b>Q.</b> Okay. Do you know how many workers they have?</p> <p>4 <b>A.</b> At least 100-something, plus.</p> <p>5 <b>Q.</b> 100 or --</p> <p>6 <b>A.</b> I never counted how many they have. But, you</p> <p>7 know, I would say there are 100-plus.</p> <p>8 <b>Q.</b> And do you know how many hoverboards they</p> <p>9 produced annually in 2016?</p> <p>10 <b>A.</b> That, I do not know.</p> <p>11 <b>Q.</b> Do you know whether Chic, in 2016, continually</p> <p>12 manufactured hoverboards?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> Yes, they did?</p> <p>15 <b>A.</b> Yes, they did.</p> <p>16 <b>Q.</b> Do you know whether the hoverboards that you</p> <p>17 purchased from Chic in 2016 -- do you know whether they</p> <p>18 were all from the same production run?</p> <p>19 <b>A.</b> That, I'm not sure. Okay? So I am assuming</p> <p>20 that, you know, it's all from the one factory.</p> <p>21 <b>Q.</b> You're assuming that it's all from one factory,</p> <p>22 but you do not know if it's all from one production</p> <p>23 line?</p> <p>24 <b>A.</b> I assume that, when I PO to Chic, it's coming</p> <p>25 from Chic.</p>                                       |

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| <p style="text-align: right;">Page 42</p> <p>1 Q. Okay. But do you know if the units you<br/>2 purchased from Chic were manufactured by Chic all at the<br/>3 same time?<br/>4 A. To my understanding, yes.<br/>5 Q. Do you know what a "lot" is?<br/>6 A. I know what a "lot" is.<br/>7 Q. What is a "lot"?<br/>8 A. A "lot" is what they produce in a group, what<br/>9 goes out.<br/>10 Q. Were these goods -- I'm sorry.<br/>11 Were the goods received by Interworks in the<br/>12 fall of 2016 from one lot or more than one lot?<br/>13 A. Again, we PO for 20,000 pieces. And what we<br/>14 receive should be from one lot.<br/>15 Q. Why do you say it should be from one lot?<br/>16 A. Or it is from one lot.<br/>17 Q. How do you know?<br/>18 A. I don't know.<br/>19 Q. And do you know that -- or do you know if, in<br/>20 the course of manufacturing consumer electronic<br/>21 products, there's a variation, from time to time, in the<br/>22 product of goods from lot to lot?<br/>23 A. I'm a distributor. So I'm not a manufacturer.<br/>24 So I'm not very familiar with that.<br/>25 Q. And you don't check for it?</p>   | <p style="text-align: right;">Page 44</p> <p>1 MR. HSU: That is a speaking objection. But<br/>2 prior to that, it wasn't.<br/>3 BY MR. LAZARUS:<br/>4 Q. How do you know the goods were accepted?<br/>5 A. Same thing as conforming, you know. We<br/>6 understand that the product is -- the product that we<br/>7 receive and accept are the quality product that Chic<br/>8 produces, based on what they have on their patent,<br/>9 what -- their claims on the patents, and what components<br/>10 they use in their patented product.<br/>11 Q. And the products that you received that were<br/>12 sent or delivered by Interworks to the QVC distribution<br/>13 center were supposed to be conforming and the same as<br/>14 the products that were delivered by Interworks to<br/>15 Digital Gadgets for drop-shipment; is that correct?<br/>16 A. Correct.<br/>17 MR. LAZARUS: Let's take a two-minute break.<br/>18 (Brief recess.)<br/>19 MR. LAZARUS: Back on the record.<br/>20 Q. Mr. Lu, do you know a person Charlie Tebele?<br/>21 A. Yes.<br/>22 Q. Have you ever met him?<br/>23 A. Yes.<br/>24 Q. When did you meet him first?<br/>25 A. CES 2017.</p> |
| <p style="text-align: right;">Page 43</p> <p>1 A. I look at, I visit the factory. I see the<br/>2 production line. And from what is proven and shown to<br/>3 me at the factory, I have all reason to believe that<br/>4 these are high-quality goods. They've presented the<br/>5 patent. So, you know, the -- my understanding, these<br/>6 are the superior products, compared to what's in the<br/>7 market.<br/>8 Q. Referring again to Paragraph 9, "Even though<br/>9 the hoverboards were conforming and accepted" -- what do<br/>10 you mean when you say they were accepted?<br/>11 A. They're accepted because, again, the products<br/>12 are from Chic. And they have the patent to support<br/>13 their product, and they have the quality control to<br/>14 support their product.<br/>15 Q. But what do you mean, they were -- these<br/>16 hoverboards were accepted?<br/>17 MR. HSU: Objection. Calls for a legal<br/>18 conclusion. And calls for speculation.<br/>19 MR. LAZARUS: Okay. No speaking objections.<br/>20 The witness can answer.<br/>21 MR. HSU: That's not a speaking objection.<br/>22 MR. LAZARUS: That's a speaking objection.<br/>23 MR. HSU: That's my document, not his document.<br/>24 How --<br/>25 MR. LAZARUS: It's a speaking objection and --</p> | <p style="text-align: right;">Page 45</p> <p>1 Q. And what is CES?<br/>2 A. Consumer Electronics Show.<br/>3 Q. And that show is usually in January, is it not?<br/>4 A. Beginning of January.<br/>5 Q. Prior to meeting Mr. Tebele at CES 2017, had<br/>6 you ever spoken to him?<br/>7 A. Yes.<br/>8 Q. How much prior to CES had you spoken to him?<br/>9 A. I don't recall how many times, but there were a<br/>10 few conference calls.<br/>11 Q. How much backwards in time was that?<br/>12 Weeks? Days? Months?<br/>13 A. Probably months.<br/>14 Q. Was Mr. Tebele the first person you spoke to<br/>15 after the introduction by Meghan?<br/>16 A. No.<br/>17 Q. Who you did you speak to first?<br/>18 A. Chris Mitchell.<br/>19 Q. Okay. And how many times did you speak to<br/>20 Chris Mitchell before you met with Mr. Tebele?<br/>21 A. Numerous times.<br/>22 So can I ask a question?<br/>23 So it's my understanding that Mr. Mitchell is<br/>24 no longer with the company. Is that... just asking if<br/>25 he's still with the company.</p>   |

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| <p style="text-align: right;">Page 54</p> <p>1 would pass the quality control inspection in industry<br/> 2 standard -- the QC control is done on the factory level,<br/> 3 which is the manufacturer, which is Chic. So the<br/> 4 products that we received and the products that we sell<br/> 5 are warranted by Chic, which is a factory. So this<br/> 6 statement here, this clause here is really incorrect.<br/> 7 <b>Q.</b> It's incorrect?<br/> 8 <b>A.</b> Yes, because we're not the manufacturer.<br/> 9 <b>Q.</b> Okay. So are you -- is it your testimony that<br/> 10 you did not warrant to Digital Gadgets that the goods<br/> 11 would pass QVC quality control?<br/> 12 <b>A.</b> Well, we -- we don't warrant the goods because<br/> 13 that's the manufacturer's job. So if there is a problem<br/> 14 with the product, it would be returned back to the<br/> 15 factory for credit. Okay? So it's not our<br/> 16 responsibility, because we're a distributor and not the<br/> 17 manufacturer; so we don't warrant the goods.<br/> 18 <b>Q.</b> Well, DG could not have returned the goods to<br/> 19 Chic for credit because they weren't billed by Chic.<br/> 20 <b>A.</b> But DG has -- when -- we've requested DG to<br/> 21 ship the goods back to us, but they refused.<br/> 22 <b>Q.</b> But that's not my question. My --<br/> 23 <b>A.</b> But that's my answer to --<br/> 24 <b>Q.</b> My question is that DG had no contract with<br/> 25 Chic and, therefore, could not have returned the goods</p> | <p style="text-align: right;">Page 56</p> <p>1 <b>Q.</b> I want you to look, please, at Paragraph --<br/> 2 withdrawn.<br/> 3 I want you to look, please, at Lu 2, and<br/> 4 specifically at Page Number 6. I apologize. Page<br/> 5 Number 5.<br/> 6 Do you see there's a Paragraph 44 there?<br/> 7 <b>A.</b> Mm-hmm.<br/> 8 <b>Q.</b> And if I told you that each paragraph of the --<br/> 9 your answer corresponds to a similarly numbered<br/> 10 paragraph of the complaint, would you agree?<br/> 11 <b>A.</b> Not understanding the question.<br/> 12 <b>Q.</b> Okay. Well, do you see Paragraph 44 of the<br/> 13 third counterclaim, which is the one that we were<br/> 14 looking at?<br/> 15 <b>A.</b> The first counter -- the first one?<br/> 16 <b>Q.</b> Third counterclaim, Page 7.<br/> 17 <b>A.</b> Okay.<br/> 18 <b>Q.</b> And that's the paragraph we just looked at.<br/> 19 Do you see that?<br/> 20 <b>A.</b> Mm-hmm.<br/> 21 <b>Q.</b> And do you see that that's the one where<br/> 22 Interworks warrants the quality -- would pass quality<br/> 23 control inspection and industry standards? Do you see<br/> 24 that?<br/> 25 <b>A.</b> Right.</p> |
| <p style="text-align: right;">Page 55</p> <p>1 to Chic for credit because they didn't buy them from<br/> 2 Chic.<br/> 3 <b>A.</b> But they could have returned it back to us, and<br/> 4 we would have returned it back to the factory.<br/> 5 <b>Q.</b> Because you were their supplier?<br/> 6 <b>A.</b> Correct.<br/> 7 <b>Q.</b> Okay. And the question, however, that led us<br/> 8 down this path was, did you, Interworks, warrant the<br/> 9 quality of these goods to Digital Gadgets?<br/> 10 <b>A.</b> So the factory warrants the products to<br/> 11 Interworks, which -- we warrant the product to<br/> 12 Digital Gadgets. So should Digital Gadgets have any<br/> 13 issues with the quality, it would be a -- it should be<br/> 14 returned back to us, and then we would pass it back to<br/> 15 the factory.<br/> 16 However, Digital Gadgets never paid for the<br/> 17 goods; so I don't know how it can credit them for the<br/> 18 goods.<br/> 19 <b>Q.</b> Did you tell Digital Gadgets that the goods<br/> 20 would pass QVC quality control?<br/> 21 <b>A.</b> Well, that's the only way we can sell to QVC,<br/> 22 is to pass the QVC quality control.<br/> 23 <b>Q.</b> So you told DG that these goods would pass QVC<br/> 24 quality control?<br/> 25 <b>A.</b> Correct.</p>   | <p style="text-align: right;">Page 57</p> <p>1 <b>Q.</b> And do you see, at Paragraph 44 of the answer,<br/> 2 Interworks admits that?<br/> 3 <b>A.</b> That it passed the quality control?<br/> 4 <b>Q.</b> You admit that it would pass the quality<br/> 5 control?<br/> 6 <b>A.</b> Correct.<br/> 7 <b>Q.</b> And you admit that it would pass the quality<br/> 8 control of QVC?<br/> 9 <b>A.</b> Yes.<br/> 10 MR. LAZARUS: Okay. I'd like to have marked as<br/> 11 the next exhibit, which would be Lu 3, an e-mail chain<br/> 12 consisting of two pages, the first of which is an e-mail<br/> 13 from Chris Mitchell to Eric, the next is an e-mail from<br/> 14 Eric to Chris Mitchell, and the next is from<br/> 15 Chris Mitchell to Eric. It's dated June 7th, the<br/> 16 Chris Mitchell e-mail, at the top; and June 6th is below<br/> 17 that.<br/> 18 (Defendant/Counter-Claimant's Exhibit<br/> 19 Lu 3 was marked for identification by<br/> 20 the Court Reporter, and a copy is<br/> 21 attached hereto.)<br/> 22 BY MR. LAZARUS:<br/> 23 <b>Q.</b> If you'll take a minute to look at these<br/> 24 e-mails.<br/> 25 <b>A.</b> Okay.</p>                     |

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| <p style="text-align: right;">Page 78</p> <p>1 Chic. I will issue an RA tomorrow. I</p> <p>2 could only provide you with the documents</p> <p>3 that I have which are provided from Chic,</p> <p>4 and those are the documents that I provided</p> <p>5 to you. And what they gave me is also what</p> <p>6 I have provided to QVC the first time</p> <p>7 around. If there's QA submission issues,</p> <p>8 please send me the reports, and I can have</p> <p>9 Chic provide the documents to me."</p> <p>10 Do you see that?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Did Mr. Mitchell ever submit the submissions to</p> <p>13 you?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. But you do know -- or you did see</p> <p>16 Ms. Kane's e-mail, where they were trying to contact you</p> <p>17 relative to these products, and Ms. Kane maintains that</p> <p>18 you refused to cooperate.</p> <p>19 You saw that; right?</p> <p>20 A. Again, this is not CC'd to me; so I -- I'm not</p> <p>21 aware of that. Okay? I don't have any e-mails of them</p> <p>22 sending me requests of that.</p> <p>23 MR. LAZARUS: Okay. It's a quarter after</p> <p>24 12:00.</p> <p>25 MR. HSU: You want to take an hour?</p> <p style="text-align: right;">Page 79</p> <p>1 MR. LAZARUS: Yeah.</p> <p>2 MR. HSU: Okay.</p> <p>3 (Lunch recess taken at 12:14 P.M.)</p> <p>4 (Proceedings resumed at 1:15 P.M.)</p> <p>5 BY MR. LAZARUS:</p> <p>6 Q. Mr. Lu, good afternoon.</p> <p>7 Did you ever discuss the possibility of</p> <p>8 entering into an exclusive arrangement with</p> <p>9 Digital Gadgets for the hoverboard?</p> <p>10 A. It was brought to me. It was asked on behalf</p> <p>11 of Digital Gadgets. It was never confirmed. And it was</p> <p>12 never said that we would go into exclusivity, but it was</p> <p>13 something that they wanted.</p> <p>14 Q. When you say, "it was something that they</p> <p>15 wanted," with whom did you discuss exclusivity?</p> <p>16 A. This was with Chris Mitchell and Chris Tebele.</p> <p>17 Q. And did you discuss it with them via e-mail, in</p> <p>18 person, or by phone, or all of them?</p> <p>19 A. All of them.</p> <p>20 Q. And did you discuss exclusivity with Mr. Tebele</p> <p>21 in person?</p> <p>22 A. It was asked for exclusivity, by Mr. Tebele,</p> <p>23 during the CES meeting that we had.</p> <p>24 Q. And what did you say?</p> <p>25 A. I said we would think about it and see how our</p> | <p style="text-align: right;">Page 80</p> <p>1 business would progress, then we can consider it.</p> <p>2 Q. And did you ever further discuss it after CES?</p> <p>3 A. It was requested again by Chris Mitchell on</p> <p>4 e-mails, requesting if they can have an exclusivity.</p> <p>5 Q. And what did you say?</p> <p>6 A. The answer was "No."</p> <p>7 Q. Did you actually say "No"?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And you said that in an e-mail?</p> <p>10 A. It said it in an e-mail and in a phone</p> <p>11 conversation.</p> <p>12 Q. Do you have that e-mail with you --</p> <p>13 A. No.</p> <p>14 Q. -- or available?</p> <p>15 How about with Mr. Tebele? Did you ever tell</p> <p>16 Mr. Tebele, "No, there will not be exclusivity"?</p> <p>17 A. He was probably CC'd on the e-mails too.</p> <p>18 Q. I want to show you the next e-mail that was</p> <p>19 previously Bates stamped Digital Gadgets 35 and have</p> <p>20 that marked as Lu 5.</p> <p>21 (Defendant/Counter-Claimant's Exhibit</p> <p>22 Lu 5 was marked for identification by</p> <p>23 the Court Reporter, and a copy is</p> <p>24 attached hereto.)</p> <p>25 THE WITNESS: Okay.</p>                            |
| <p style="text-align: right;">Page 79</p> <p>1 MR. LAZARUS: Yeah.</p> <p>2 MR. HSU: Okay.</p> <p>3 (Lunch recess taken at 12:14 P.M.)</p> <p>4 (Proceedings resumed at 1:15 P.M.)</p> <p>5 BY MR. LAZARUS:</p> <p>6 Q. Mr. Lu, good afternoon.</p> <p>7 Did you ever discuss the possibility of</p> <p>8 entering into an exclusive arrangement with</p> <p>9 Digital Gadgets for the hoverboard?</p> <p>10 A. It was brought to me. It was asked on behalf</p> <p>11 of Digital Gadgets. It was never confirmed. And it was</p> <p>12 never said that we would go into exclusivity, but it was</p> <p>13 something that they wanted.</p> <p>14 Q. When you say, "it was something that they</p> <p>15 wanted," with whom did you discuss exclusivity?</p> <p>16 A. This was with Chris Mitchell and Chris Tebele.</p> <p>17 Q. And did you discuss it with them via e-mail, in</p> <p>18 person, or by phone, or all of them?</p> <p>19 A. All of them.</p> <p>20 Q. And did you discuss exclusivity with Mr. Tebele</p> <p>21 in person?</p> <p>22 A. It was asked for exclusivity, by Mr. Tebele,</p> <p>23 during the CES meeting that we had.</p> <p>24 Q. And what did you say?</p> <p>25 A. I said we would think about it and see how our</p>  | <p style="text-align: right;">Page 81</p> <p>1 BY MR. LAZARUS:</p> <p>2 Q. Have you seen that e-mail before?</p> <p>3 A. Yes.</p> <p>4 Q. And did you discuss exclusivity with Mr. Tebele</p> <p>5 at CES?</p> <p>6 A. Not in great detail.</p> <p>7 And, again, it was their request and asking me</p> <p>8 permission for exclusivity.</p> <p>9 Q. Now, during the period of the fall of 2016, and</p> <p>10 after you delivered to the QVC distribution center the</p> <p>11 10,000 pieces that we spoke of this morning, did you</p> <p>12 continue to deliver High Roller Model Cs to QVC</p> <p>13 directly?</p> <p>14 A. No.</p> <p>15 Q. What was the reason?</p> <p>16 A. The reason being is QVC wanted to have a</p> <p>17 drop-ship vendor to drop-ship the goods.</p> <p>18 Q. And did there come a time when you approached</p> <p>19 QVC and asked to resume shipping hoverboards to QVC</p> <p>20 directly from Interworks?</p> <p>21 A. No.</p> <p>22 Q. You never went back to them and asked them to</p> <p>23 resume direct hoverboard purchases from you?</p> <p>24 A. Because at that time, QVC did not set up a --</p> <p>25 an airing, to my knowledge, to air the product during</p> |



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| <p style="text-align: right;">Page 82</p> <p>1 the summer -- during the period of time. So they had it<br/> 2 online, which -- Digital Gadgets did the fulfillment.<br/> 3 <b>Q.</b> I'll show you next an e-mail chain Bates<br/> 4 stamped 244 through 246.<br/> 5 I'll have that marked as Lu 6.<br/> 6 (Defendant/Counter-Claimant's Exhibit<br/> 7 Lu 6 was marked for identification by<br/> 8 the Court Reporter, and a copy is<br/> 9 attached hereto.)<br/> 10 THE WITNESS: Okay.<br/> 11 BY MR. LAZARUS:<br/> 12 <b>Q.</b> Do you see that, in this e-mail chain, the red<br/> 13 comments are yours?<br/> 14 <b>A.</b> Correct.<br/> 15 <b>Q.</b> And do you see that, at Page 244, towards the<br/> 16 bottom, you write, "Also, these are goods that I<br/> 17 could have sold to my other accounts, and<br/> 18 I've given you guys a lower cost for<br/> 19 servicing QVC"?<br/> 20 Do you see that?<br/> 21 <b>A.</b> Mm-hmm.<br/> 22 <b>Q.</b> What do you mean, that you gave them a lower<br/> 23 cost for servicing QVC?<br/> 24 (Interruption in proceedings due to cell<br/> 25 phone.)</p>   | <p style="text-align: right;">Page 84</p> <p>1 <b>A.</b> Well, explaining to them that -- the legal<br/> 2 process and how the progress of the case is going for<br/> 3 Chic and their -- and their -- how they're holding up<br/> 4 with their patent against all the copycats.<br/> 5 <b>Q.</b> In the same portion at Bates stamp Page 245,<br/> 6 you continue, "and also pitch the new Model F and K2<br/> 7 Mini. As I have told you, I am there to<br/> 8 discuss the product, either Digital Gadget<br/> 9 (sic) or Interworks sells to QVC is not my<br/> 10 concern."<br/> 11 Do you see that?<br/> 12 <b>A.</b> Mm-hmm.<br/> 13 <b>Q.</b> What was that in reference to?<br/> 14 <b>A.</b> It's in reference to us pitching the new<br/> 15 products to QVC; and whether QVC wants to buy directly<br/> 16 from Interworks for the store, or we can be set up as a<br/> 17 direct vendor at the time, or Digital Gadgets can<br/> 18 also -- we can allow Digital Gadgets to sell the Model F<br/> 19 and K2, the new products, to QVC as a drop-ship vendor.<br/> 20 <b>Q.</b> And was it your contemplation that, while<br/> 21 Digital Gadgets was drop-shipping QVC, you would<br/> 22 simultaneously be shipping direct to their DC?<br/> 23 <b>A.</b> Could be, yeah.<br/> 24 <b>Q.</b> Did you ever agree with Digital Gadgets that,<br/> 25 for so long as they were drop-shipping QVC, you would</p> |
| <p style="text-align: right;">Page 83</p> <p>1 MR. LAZARUS: I'll call you back.<br/> 2 THE WITNESS: I offered them a better cost to<br/> 3 continue to service QVC.<br/> 4 BY MR. LAZARUS:<br/> 5 <b>Q.</b> And how were they servicing QVC?<br/> 6 <b>A.</b> Drop-shipping.<br/> 7 <b>Q.</b> What did you mean when you used the expression<br/> 8 "servicing"?<br/> 9 <b>A.</b> "Servicing" is drop-shipping, because you're a<br/> 10 drop-ship vendor or not a drop-ship vendor.<br/> 11 <b>Q.</b> The same exhibit, Bates Stamp Page 244 -- 245.<br/> 12 Again your red comment, beginning, "As I've been up<br/> 13 front with you."<br/> 14 "As I have been upfront with you and told<br/> 15 you that I was going to visit QVC, and we<br/> 16 want to lay to rest all these claims and<br/> 17 update the buyers the currently situation<br/> 18 (sic) with the ITC lawsuit and all the<br/> 19 legal issues surrounding the hoverboards."<br/> 20 What were you referring to?<br/> 21 <b>A.</b> The ITC lawsuit is a -- it is a case of --<br/> 22 surrounding Chic suing all the copycats in the market<br/> 23 making hoverboards.<br/> 24 <b>Q.</b> What were you approaching or going to go to QVC<br/> 25 about?</p> | <p style="text-align: right;">Page 85</p> <p>1 not ship direct to the QVC --<br/> 2 <b>A.</b> No.<br/> 3 <b>Q.</b> -- DC?<br/> 4 <b>A.</b> No.<br/> 5 <b>Q.</b> What -- why would QVC need both sources of --<br/> 6 <b>A.</b> QVC don't -- I'm sorry. Go ahead.<br/> 7 <b>Q.</b> -- of the hoverboard?<br/> 8 <b>A.</b> So QVC does not need both parties. Okay? So<br/> 9 for me, I can sell QVC directly, which -- they have to<br/> 10 have an air time. And with the air time, they would do<br/> 11 the -- their airing of the hoverboards. And then we<br/> 12 would, like the first round, ship the goods directly to<br/> 13 the DC, and they would send it out to the consumers.<br/> 14 Now, I can use Digital Gadgets. I can use<br/> 15 distributor A, B, C, D, E -- whoever I want to use. It<br/> 16 doesn't have to be Digital Gadgets. So I can assign<br/> 17 whomever I want to be the drop-ship vendor per QVC<br/> 18 wanting -- "Hey, we like to work with this guy," "this<br/> 19 guy," "this guy."<br/> 20 I can sell it to whomever I want. But<br/> 21 initially we were working with Digital Gadgets. So, you<br/> 22 know, we talked about how, if I'm going to sell the<br/> 23 product and if this has to go to a drop-ship, then I'll<br/> 24 allow them to sell it.<br/> 25 <b>Q.</b> You would allow Digital Gadgets to do the</p>   |



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| <p style="text-align: right;">Page 86</p> <p>1 drop-ship --</p> <p>2 <b>A.</b> Correct.</p> <p>3 <b>Q.</b> -- because you did not want to do the</p> <p>4 drop-ship?</p> <p>5 <b>A.</b> No. Because we're not a certified drop-ship</p> <p>6 vendor. That's a whole different process.</p> <p>7 <b>Q.</b> What does that mean, "a certified drop-ship</p> <p>8 vendor"?</p> <p>9 <b>A.</b> So you have to apply to be a drop-ship vendor</p> <p>10 because the process labeling and that stuff is different</p> <p>11 than shipping it directly to a DC, because now you're</p> <p>12 shipping directly to a consumer on behalf of QVC so. We</p> <p>13 were not the drop-ship vendor at the time.</p> <p>14 <b>Q.</b> So when you say you're not a certified</p> <p>15 drop-ship vendor, you mean that QVC had not certified</p> <p>16 Interworks as a drop-ship vendor?</p> <p>17 <b>A.</b> Right. We do not have that part of the vendor.</p> <p>18 <b>Q.</b> And QVC, at the point in time of November or</p> <p>19 thereabouts of 2016, wanted drop-ship goods as opposed</p> <p>20 to shipments directly to their DC?</p> <p>21 <b>A.</b> Well, the second shipment which we used</p> <p>22 Digital Gadgets for was that -- because of the timing</p> <p>23 issue. And that's why we sold the goods to Digital</p> <p>24 Gadgets.</p> <p>25 <b>Q.</b> What about the next shipment?</p>                         | <p style="text-align: right;">Page 88</p> <p>1 number, a PO number, in the left-hand columns?</p> <p>2 <b>A.</b> Correct.</p> <p>3 <b>Q.</b> Who assigned the PL number?</p> <p>4 <b>A.</b> That would be from Digital Gadgets.</p> <p>5 <b>Q.</b> What does that stand for?</p> <p>6 <b>A.</b> Purchase order number.</p> <p>7 <b>Q.</b> The PL number stands for the purchase order</p> <p>8 number?</p> <p>9 <b>A.</b> I'm sorry. The PL number is our sales order</p> <p>10 number.</p> <p>11 <b>Q.</b> Okay. So is there an internal document called</p> <p>12 a sales order?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> And is it something that is printed, or is it</p> <p>15 maintained solely in the computer systems of Interworks?</p> <p>16 <b>A.</b> It is in the system.</p> <p>17 <b>Q.</b> And what --</p> <p>18 <b>A.</b> And it's -- it's also printed.</p> <p>19 <b>Q.</b> And what does it show on the sales orders?</p> <p>20 <b>A.</b> The same information that's on the invoice.</p> <p>21 <b>Q.</b> Okay. And this invoice, do you see that the</p> <p>22 terms state "Net 60 days"?</p> <p>23 <b>A.</b> Correct.</p> <p>24 <b>Q.</b> What does that mean?</p> <p>25 <b>A.</b> That means this invoice is due 60 days upon the</p>  |
| <p style="text-align: right;">Page 87</p> <p>1 <b>A.</b> Well, the second shipment was also the</p> <p>2 continuation. Because they needed more goods, and the</p> <p>3 products were selling; so Digital Gadgets continued to</p> <p>4 order.</p> <p>5 <b>Q.</b> What was the reason that you did not ship these</p> <p>6 later shipments direct to QVC?</p> <p>7 <b>A.</b> Because we were looking at the new models.</p> <p>8 <b>MR. LAZARUS:</b> I want to put in front of the</p> <p>9 witness a group of documents that was previously marked</p> <p>10 Asamoah 1 through Asamoah 5, which we've described on</p> <p>11 yesterday's transcript with Mr. Tu.</p> <p>12 <b>Q.</b> If you could take a look at that, please.</p> <p>13 <b>A.</b> Okay.</p> <p>14 <b>Q.</b> Mr. Lu, have you had an opportunity to review</p> <p>15 the documents in front of you, Asamoah 1 through 5?</p> <p>16 <b>A.</b> Yeah.</p> <p>17 <b>Q.</b> Okay. I want you to turn to the page -- fourth</p> <p>18 page in, which is marked Asamoah 2.</p> <p>19 <b>A.</b> Okay.</p> <p>20 <b>Q.</b> And do you know what this document is?</p> <p>21 <b>A.</b> Yeah. This is our invoice to Digital Gadgets.</p> <p>22 <b>Q.</b> Okay. And what product were you invoicing?</p> <p>23 <b>A.</b> High Roller Model C black and High Roller</p> <p>24 Model C white.</p> <p>25 <b>Q.</b> Do you see the Interworks document has a PL</p> | <p style="text-align: right;">Page 89</p> <p>1 ship date.</p> <p>2 <b>Q.</b> And if you turn, in the document, further on,</p> <p>3 and if you can find the document Bates stamped</p> <p>4 Digital Gadgets 199.</p> <p>5 <b>A.</b> Okay.</p> <p>6 <b>Q.</b> What is this document?</p> <p>7 <b>A.</b> That's a picking sheet.</p> <p>8 <b>Q.</b> And what is a picking sheet?</p> <p>9 <b>A.</b> A picking sheet is what we would put out for</p> <p>10 the shippers to pick the product, and then confirm that</p> <p>11 it's shipped the units that it was -- it was supposed to</p> <p>12 be packed.</p> <p>13 <b>Q.</b> And do you see on that document, one of the</p> <p>14 notations is "Consignment"?</p> <p>15 <b>A.</b> Mm-hmm.</p> <p>16 <b>Q.</b> What does that mean?</p> <p>17 <b>A.</b> Consignment means we assign the products to the</p> <p>18 customer, and they -- yeah, and then they pay the goods.</p> <p>19 <b>Q.</b> And then they what?</p> <p>20 <b>A.</b> They pay the goods as we ship the goods.</p> <p>21 <b>Q.</b> Okay. And did you enter into an arrangement</p> <p>22 with Digital Gadgets for consignment sales?</p> <p>23 <b>A.</b> We did not engage in a consignment deal with</p> <p>24 Digital Gadgets.</p> <p>25 There was a discussion of consignment under the</p> |

| Page 90  | Page 92  |
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| <p>1 condition and stipulation of Digital Gadgets providing</p> <p>2 their financials to our factor to see how much credit</p> <p>3 that they are creditworthy of (verbatim), in which we've</p> <p>4 requested for two and a half months. And Charlie Tebele</p> <p>5 would give us the runaround.</p> <p>6 And, also, the bank -- I'm going to use the</p> <p>7 word "conspired" with Charlie, saying that they had</p> <p>8 faxed the information numerous times and our insurance</p> <p>9 company had never got anything. And we followed up; we</p> <p>10 called. No response from anybody, and never was any</p> <p>11 financials documents sent to our insurance company.</p> <p>12 And finally they had a credit reference from</p> <p>13 Digital Gadgets's bank account. And this is prior to</p> <p>14 Charlie telling us that he has got a gazillion dollars,</p> <p>15 "Don't worry about financial." The bank statement came</p> <p>16 back from Charlie's bank with only \$26,000. And I've</p> <p>17 given them one -- almost a million dollars' worth of</p> <p>18 products. So --</p> <p>19 Q. Before you made your shipments to</p> <p>20 Digital Gadgets, did you -- did you do a credit check on</p> <p>21 them?</p> <p>22 A. We did not do a credit check because of the --</p> <p>23 first of all, we didn't do the credit check because it</p> <p>24 was very, very time-consuming that QVC needed the</p> <p>25 product. And we rushed it. But Chris Mitchell and</p> | <p>1 declined.</p> <p>2 Q. Do you know a business, Cash Capital?</p> <p>3 A. Yes.</p> <p>4 Q. Who is Cash Capital?</p> <p>5 A. Cash Capital is our -- it's a lender.</p> <p>6 Q. And when were they your lender?</p> <p>7 A. I believe it's around 2016.</p> <p>8 Q. Are they still your lender today?</p> <p>9 A. No, they're not.</p> <p>10 Q. Do you have another lender today?</p> <p>11 A. No, I do not.</p> <p>12 MR. LAZARUS: Can we have this marked, please.</p> <p>13 (Defendant/Counter-Claimant's Exhibit</p> <p>14 Lu 7 was marked for identification by</p> <p>15 the Court Reporter, and a copy is</p> <p>16 attached hereto.)</p> <p>17 THE WITNESS: Okay.</p> <p>18 BY MR. LAZARUS:</p> <p>19 Q. Do you recall receiving this notification on or</p> <p>20 about July 10th of 2016?</p> <p>21 I would appreciate counsel not directing his</p> <p>22 attention to specific portions of the document. I don't</p> <p>23 think that's fair or appropriate.</p> <p>24 MR. HSU: Well, I'm looking at the very last</p> <p>25 page, which I've never seen before. I'm not asking any</p>       |
| Page 91  | Page 93  |
| <p>1 Charlie promised that they would supply the documents to</p> <p>2 us and we would do it simultaneously. And I think</p> <p>3 there's numerous e-mails, me chasing them for the</p> <p>4 financials. And they've never complied and gave us the</p> <p>5 financials.</p> <p>6 Q. And you mentioned a "factor."</p> <p>7 What is a "factor"?</p> <p>8 A. A "factor" is our insurance company for product</p> <p>9 that is shipped to a customer. And they would need to</p> <p>10 do the credit check and ensure what would be the credit</p> <p>11 line or what is the company's credit worthy (verbatim)</p> <p>12 of, you know, amount of credits to grant them.</p> <p>13 Q. And who was your factor in 2016?</p> <p>14 A. Our factor is called Bibby Financial.</p> <p>15 Q. Okay. And are you aware that various of the</p> <p>16 invoices in this lawsuit are marked assigned that</p> <p>17 the invoices were assigned and payable to</p> <p>18 Bibby Financial?</p> <p>19 A. These invoices were submitted to Bibby at the</p> <p>20 time that we were trying to get the credit check and</p> <p>21 credit reference, as Charlie had said that he's totally</p> <p>22 creditworthy of millions of dollars.</p> <p>23 Q. Were the invoices assigned -- the invoices to</p> <p>24 Digital Gadgets assigned and payable to Bibby Financial?</p> <p>25 A. It was submitted to them, but they were</p>  | <p>1 questions, not pointing out. But go ahead.</p> <p>2 BY MR. LAZARUS:</p> <p>3 Q. Okay. Do you recall receiving this document in</p> <p>4 or about July of 2016?</p> <p>5 A. I think the date is incorrect. The date should</p> <p>6 be 2017, not 2016.</p> <p>7 Q. Okay. Do you recall receiving this document in</p> <p>8 July of 2017?</p> <p>9 A. I don't recall receiving this letter.</p> <p>10 Q. Did there come a time when you entered into an</p> <p>11 agreement with Cash Capital?</p> <p>12 A. Yes.</p> <p>13 Q. What was the nature of that agreement?</p> <p>14 A. It was for financing -- financing purchasing.</p> <p>15 Q. Okay. And do you see that the letter of --</p> <p>16 dated July 10th, of 2016, at the end of the first</p> <p>17 paragraph, it writes, "Pursuant to the language of</p> <p>18 the merchant agreement, the merchant has</p> <p>19 sold, assigned and transferred to CCG a</p> <p>20 certain percentage of its future</p> <p>21 receivables"? Do you see that?</p> <p>22 A. Okay.</p> <p>23 Q. Is that true?</p> <p>24 A. No.</p> <p>25 Q. So they lied?</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 MR. HSU: Okay. Let's hear it.</p> <p>2 MR. LAZARUS: Would the reporter read the</p> <p>3 attempted question.</p> <p>4 (Whereupon, the record was read back</p> <p>5 by the Court Reporter as follows:</p> <p>6 "Q. And what happened with that</p> <p>7 judgment?</p> <p>8 "A. That was settled.</p> <p>9 "Q. When?</p> <p>10 "A. It was settled, off my head,</p> <p>11 around like April --")</p> <p>12 MR. HSU: He just answered. He answered.</p> <p>13 THE WITNESS: Can I get excused to the restroom</p> <p>14 real quick?</p> <p>15 MR. HSU: Sure.</p> <p>16 (Brief recess.)</p> <p>17 MR. LAZARUS: What was the last question?</p> <p>18 (Whereupon, the record was read back</p> <p>19 by the Court Reporter as follows:</p> <p>20 "Q. And what happened with that</p> <p>21 judgment?</p> <p>22 "A. That was settled.</p> <p>23 "Q. When?</p> <p>24 "A. It was settled, off my head,</p> <p>25 around like April --")</p>  | <p style="text-align: right;">Page 104</p> <p>1 income that comes in.</p> <p>2 Q. And do you see that this lien filing is a</p> <p>3 filing on all assets of the debtor?</p> <p>4 A. Where is that?</p> <p>5 Q. It's in the box number 4, "Collateral."</p> <p>6 A. I was not aware of this filing.</p> <p>7 Q. At the date that you commenced this lawsuit</p> <p>8 against Digital Gadgets, had you settled your claims</p> <p>9 with Cash Capital?</p> <p>10 A. Yes.</p> <p>11 Q. So by the time this lawsuit was started in July</p> <p>12 of 2017, you had settled with Cash Capital?</p> <p>13 A. No. The Cash Capital was settled in and around</p> <p>14 April of 2018.</p> <p>15 Q. While the lawsuit was pending?</p> <p>16 While this lawsuit was pending?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So when the lawsuit was commenced, by</p> <p>19 Interworks, against Digital Gadgets, were you aware that</p> <p>20 Cash Capital owned the receivables on which you were</p> <p>21 suing?</p> <p>22 A. I was not aware of that.</p> <p>23 Again, if Digital Gadgets paid the receivables</p> <p>24 to them, then it would have probably been cleared a long</p> <p>25 time ago.</p> |
| <p style="text-align: right;">Page 103</p> <p>1 BY MR. LAZARUS:</p> <p>2 Q. April of what year?</p> <p>3 A. 2018.</p> <p>4 Q. '18?</p> <p>5 A. Yes.</p> <p>6 Q. At the time this lawsuit was commenced, had --</p> <p>7 are you aware of whether Cash Capital had filed a lien</p> <p>8 on all of the assets of Interworks?</p> <p>9 A. I'm not aware of who or when they sent any</p> <p>10 liens out.</p> <p>11 MR. LAZARUS: Can we have this marked as the</p> <p>12 next exhibit. I apologize. I just want to identify it.</p> <p>13 Tu 9 is Bates stamped CCG 1. Thank you.</p> <p>14 (Defendant/Counter-Claimant's Exhibit</p> <p>15 Tu 9 was marked for identification by</p> <p>16 the Court Reporter, and a copy is</p> <p>17 attached hereto.)</p> <p>18 BY MR. LAZARUS:</p> <p>19 Q. Have you ever seen this document before?</p> <p>20 A. No, I have not.</p> <p>21 Q. Okay. Have you -- do you have any</p> <p>22 understanding of what a UCC financing statement is?</p> <p>23 A. To my understanding, an UCC filing is the</p> <p>24 position in which the financial institute holds the --</p> <p>25 what do you call it? The first rights of whatever</p> | <p style="text-align: right;">Page 105</p> <p>1 MR. LAZARUS: Helena, could you put the</p> <p>2 original exhibits in front of the witness.</p> <p>3 Q. Okay. If you turn to Tu 6 in the package of</p> <p>4 the original exhibits in front of you, it's an ACORD</p> <p>5 Certificate of Liability Insurance.</p> <p>6 MR. HSU: Tu 6.</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. LAZARUS:</p> <p>9 Q. Have you ever seen Tu 6 before today?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What is Tu 6?</p> <p>12 A. Tu 6 is a certificate of liability insurance.</p> <p>13 Q. Okay. And if you'll turn to the next document</p> <p>14 in the package in front of you, which is Tu 7.</p> <p>15 MR. HSU: This is Tu 7.</p> <p>16 BY MR. LAZARUS:</p> <p>17 Q. Have you ever seen that document before?</p> <p>18 A. I believe so.</p> <p>19 Q. Okay. What is this document?</p> <p>20 A. It's a certificate of liability insurance.</p> <p>21 Q. Okay. And do you see that this document names</p> <p>22 Digital Gadgets as a certificate holder?</p> <p>23 A. Correct.</p> <p>24 Q. And who caused this document to name</p> <p>25 Digital Gadgets as a certificate holder?</p>                     |

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| <p style="text-align: right;">Page 106</p> <p>1 A. We -- we contacted our insurance company to --</p> <p>2 Q. What was the reason that you contacted the</p> <p>3 insurance company so as to name Digital Gadgets as a</p> <p>4 certificate holder?</p> <p>5 A. We added them as an additional insured.</p> <p>6 Q. What was the reason you added them as an</p> <p>7 additional insured?</p> <p>8 A. Well, that is the -- pretty much part of the</p> <p>9 process with all the retail accounts and distributors.</p> <p>10 You know, we add them into our umbrella product</p> <p>11 liability insurance.</p> <p>12 Q. Is that something that's required by the</p> <p>13 retailers?</p> <p>14 A. It's required by retailers and distributors.</p> <p>15 Q. Okay. And QVC -- did QVC require that you add</p> <p>16 Digital Gadgets as a certificate holder under your</p> <p>17 policy?</p> <p>18 A. No.</p> <p>19 Q. Did Digital Gadgets require that you add them</p> <p>20 as a certificate holder under your insurance --</p> <p>21 A. Yes.</p> <p>22 Q. -- policy?</p> <p>23 A. Yes.</p> <p>24 Q. And did you agree to do that?</p> <p>25 A. I added them.</p> <p style="text-align: right;">Page 107</p> <p>1 Q. Well, do you see that -- you added, but do you</p> <p>2 see the indication in the section of document marked</p> <p>3 "Description of Operations," "No coverage extended to</p> <p>4 hoverboards"?</p> <p>5 A. Well, I guess the --</p> <p>6 Q. Do you see that?</p> <p>7 A. I do see that.</p> <p>8 But Digital Gadgets didn't give you the first</p> <p>9 certificate, which doesn't have that clause in there.</p> <p>10 And the reason for the clause for this certificate was</p> <p>11 we were changing our insurance company. The old</p> <p>12 insurance company had to cancel this policy. That's why</p> <p>13 they're no longer covering the hoverboard. We added</p> <p>14 another policy to cover all the retailers from covering</p> <p>15 hoverboards.</p> <p>16 Q. Isn't it true that there was a period of time</p> <p>17 in which there were no insurance coverage for</p> <p>18 Digital Gadgets?</p> <p>19 A. No, because it's a -- it's a bridge-binding</p> <p>20 policy that, when we did the transition, there was --</p> <p>21 there was still insurance coverage.</p> <p>22 Q. So there was --</p> <p>23 A. There was insurance coverage.</p> <p>24 Q. -- there was never a time when there was no</p> <p>25 coverage for --</p> | <p style="text-align: right;">Page 108</p> <p>1 A. No.</p> <p>2 Q. -- Digital Gadgets?</p> <p>3 A. No, not for Digital Gadgets and not for any of</p> <p>4 my accounts.</p> <p>5 Q. I want to go back to the documents that are</p> <p>6 Bright Asamoah exhibits, 1 through 5, if we can.</p> <p>7 MR. HSU: We're looking at the invoices; right?</p> <p>8 Asamoah --</p> <p>9 MR. LAZARUS: Yes.</p> <p>10 Q. Okay. And I'd ask you to turn to Asamoah 5,</p> <p>11 which has Bates stamp Interworks 472.</p> <p>12 A. Okay.</p> <p>13 Q. Do you see that Asamoah 5, Bates Stamp</p> <p>14 Interworks 472, is a purchase order?</p> <p>15 A. Mm-hmm.</p> <p>16 Q. And do you see that it's a purchase order from</p> <p>17 Digital Gadgets to Interworks?</p> <p>18 A. Correct.</p> <p>19 Q. Do you see that the purchase order has terms</p> <p>20 and conditions?</p> <p>21 A. Yes.</p> <p>22 Q. Are you familiar with those terms and</p> <p>23 conditions?</p> <p>24 A. The purchase order terms and conditions?</p> <p>25 Q. Yes, sir.</p> <p style="text-align: right;">Page 109</p> <p>1 Have you ever seen them before?</p> <p>2 A. I personally did not read those terms and</p> <p>3 conditions.</p> <p>4 Q. Okay. And who -- in the ordinary course of the</p> <p>5 business of Interworks, who would receive purchase</p> <p>6 orders from a customer such as Digital Gadgets?</p> <p>7 A. It would either go to me or it would go to</p> <p>8 Tony.</p> <p>9 Q. Okay. And do you know if Mr. Tu ever received</p> <p>10 purchase orders from Digital Gadgets in the form in</p> <p>11 front of you as Asamoah 5?</p> <p>12 A. I believe so.</p> <p>13 Q. Okay. Do you know if he read them?</p> <p>14 A. I do not know if he did or not.</p> <p>15 Q. Do you know -- did you ever discuss the</p> <p>16 purchase order terms and conditions, as they appear in</p> <p>17 Asamoah 5, with Mr. Tu?</p> <p>18 A. No, I did not.</p> <p>19 Q. And do you see that, among the terms and</p> <p>20 conditions, is a term that says, "Buyer may charge</p> <p>21 seller all expenses of unpacking, examining,</p> <p>22 repacking and reshipping nonconforming</p> <p>23 goods. In the event buyer receives goods</p> <p>24 whose defects were nonconforming or not</p> <p>25 apparent upon examination, buyer reserves</p> |
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